

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - -X  
SUENG-YONG OK, : 18-CV-392 (BMC)  
Plaintiff, :  
-against- : United States Courthouse  
NEW YORK CITY DEPARTMENT OF : Brooklyn, New York  
EDUCATION, ET AL., :  
Defendants. : Friday, April 6, 2018  
: 11:30 a.m.  
- - - - -X

TRANSCRIPT OF CIVIL CAUSE  
FOR CONFERENCE  
BEFORE THE HONORABLE BRIAN M. COGAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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1 (In open court.)

2 THE COURTROOM DEPUTY: Ok versus New York City  
3 Department of Ed., et al., Docket Number 18-CV-392.

4 Counsel, please state your appearances starting  
5 with the plaintiff.

6 MR. GLASS: My name is Bryan Glass, and I have to  
7 my left Mr. Ok, the plaintiff.

8 THE COURT: Okay. Good morning.

9 THE PLAINTIFF: Good morning.

10 MS. BRANCH: Your Honor, Cassandra Branch for  
11 Defendants New York City Department of Education, Mr. Amaya,  
12 and Mr. Chin.

13 THE COURT: Okay. Ms. Branch, you are not  
14 understanding me.

15 MS. BRANCH: Okay. I'm sorry, Your Honor?

16 THE COURT: You have to think, Why does the judge  
17 want a communication from me about the case or the Rule 16  
18 conference?

19 MS. BRANCH: Yes.

20 THE COURT: Obviously, your first response to my  
21 request for a submission, a list of denials and affirmative  
22 defenses, that does not help me understand your view of the  
23 case.

24 MS. BRANCH: I understand that, Your Honor.

25 THE COURT: Okay. So then you sent me the second

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1 letter.

2 MS. BRANCH: Yes.

3 THE COURT: The second letter really also does not  
4 help me understand your view of the case. It suggests to me  
5 that instead of talking to your client, Mr. Chin --

6 MS. BRANCH: Yes.

7 THE COURT: -- and finding out what happened here  
8 between him and the plaintiff and telling me his version of  
9 the story, you did not even call Mr. Chin.

10 MS. BRANCH: Oh, no, I did. I'm sorry.

11 THE COURT: Okay. Well, what is his -- this is  
12 what I want to know: What is his version of what went wrong  
13 between them? I have the plaintiff's version. I do not  
14 have his version. You just sent me a letter saying, I have  
15 read the complaint, and I think I may have legal challenges  
16 to the face of the complaint. That does not help me in  
17 planning discovery or understanding the case. So help me  
18 understand the case.

19 MS. BRANCH: Okay. I apologize again, Your Honor.  
20 I definitely did call Mr. Chin. I spoke to him extensively  
21 actually, in person, so --

22 THE COURT: You acknowledge, I would not know that  
23 from your letter, right?

24 MS. BRANCH: Yes.

25 THE COURT: Okay. So tell me, what is the store?

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1 MS. BRANCH: There are a lot of allegations and  
2 complaint, so I would first ask Your Honor if you would like  
3 me to go through them chronologically or just give me the  
4 steps --

5 THE COURT: No, I want you to go through them not  
6 at all. I want you to tell me what is Mr. Chin's story.  
7 Why does he have difficulty with this plaintiff?

8 MS. BRANCH: Well, Your Honor, there are a lot of  
9 things, frankly, that are left unsaid in the complaint.  
10 Let's start there.

11 THE COURT: Those are the things I want to hear  
12 from you.

13 MS. BRANCH: Okay. So there are a lot of things  
14 left unsaid in the complaint.

15 There were a number of email communications  
16 between the plaintiff and Mr. Chin that included other  
17 individuals in the school, mainly in the school white  
18 females that you are seeing referenced in the letter in the  
19 complaint. In these various emails, Mr. Chin would email  
20 about, for instance, a schoolwide change in policy or a  
21 schoolwide event to which Mr. Chin many occasions would  
22 respond not only addressing whatever the announcement was,  
23 but lodging personal complaints against Mr. Chin and his  
24 colleagues and other individuals who had little or nothing  
25 to do at all with the original content of the email.

1           Mr. Chin ignored these statements from the  
2 plaintiff and at the end of the, what is it, so the  
3 2015/2016 school year still approved Mr. Ok effective or  
4 highly effective I believe rating for that school year.

5           When I spoke to Mr. Chin, he said that the reason  
6 that he did that is because while at that point, he had only  
7 been in the school for a year and this particular school, by  
8 the way, is one that has seen many principals, seven or  
9 eight, in the last ten years. So at the end of the first  
10 school year, Mr. Chin still gave Mr. Ok a positive rating  
11 because it wasn't an issue with having to do directly with  
12 the classroom or with his performance. So the second year  
13 came around and there were even more issues. Now, Mr. Chin  
14 actually only evaluated -- directly evaluated one of the  
15 lessons once himself, the rest of the evaluations were  
16 performed by the assistant principal who was in charge of  
17 the science department.

18           THE COURT: And were those negative performance  
19 evaluations?

20           MS. BRANCH: Not in whole. There are 22  
21 components on an evaluation, so some of them were positive  
22 and then some components were negative. It boils down to a  
23 numeric computation at the end, right?

24           So the evaluations were mostly performed by  
25 Mr. Maya and Chin did one of them. At the end of the school

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1 year, Mr. Ok had a, I believe there was a developing rating,  
2 because again, it is calculated by the numbers. There is no  
3 discussion of exercise by the principal at that time.

4 THE COURT: Where is developing on the scale of A  
5 through D?

6 MS. BRANCH: So it starts as highly effective.  
7 Next is effective. And then next would be developing. And  
8 then next would be ineffective.

9 THE COURT: Got it. Okay.

10 MS. BRANCH: So during that school year there were  
11 several parent/teacher conferences. They were faculty  
12 meetings. There were a lot of complaints by colleagues of  
13 Mr. Ok's to the principal to SEI. SEI is the school-based  
14 investigation -- school special commission of investigation.  
15 And then there's also the DOE's office of special  
16 investigation, which really is a larger unit. OSI did an  
17 investigation following all the complaints about Mr. Ok, and  
18 it was a substantial investigation that lasted several  
19 months, actually. And by the way, Mr. Chin was the one who  
20 submitted those complaints by the other teachers and  
21 colleagues to OSI, because at that point, he had had enough  
22 of the insubordination and the rude comments. There were  
23 personal attacks on other teachers. They frequently  
24 requested for Mr. Ok to stop and please disclude [sic] us  
25 from all of your emails and your personal matters, and he

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1 blatantly refused and replied to the e-mail, I will not  
2 basically. It's your problem. If you don't want to look at  
3 it, delete the email. So OSI did find that Mr. Ok was in  
4 violation of many rules and had acted egregiously and  
5 inappropriately, and they recommended that his capability  
6 with respect to DOE emails, meaning replied all and being  
7 included on some lists, should be removed. And they  
8 actually recommended that he be terminated. So it wasn't  
9 until several months later that Mr. Chin actually decided to  
10 recommend the determination that had been recommended by the  
11 office of special investigation. So we're at the point now  
12 where there were charges, disciplinary charges filed against  
13 Mr. Ok under 3020-A, and those disciplinary charges, I  
14 believe, there were four or five specifications, including  
15 some of the emails exchanges. It referenced Mr. Ok's  
16 behavior during a specific parent/teacher conference. That  
17 was the parent/teacher conference which I believe in the  
18 complaint he alleges that he was told -- that he discussed a  
19 bullying incident. So during that particular conference,  
20 the specification discussed how Mr. Ok was giving parents  
21 his personal cell phone numbers, telling them to call him  
22 personally and talk about what was really going on in the  
23 school, to phrase, and other things such as telling the  
24 parents that kids were being passed through along the grades  
25 without any consideration for whether they should really be

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1 going further in their education.

2 So Mr. Ok was removed from the school, and that is  
3 not something unique to Mr. Ok's case. Anytime a teacher is  
4 charged with --

5 THE COURT: When you say "removed," that means  
6 like suspended pending the final determination of the  
7 charges?

8 MS. BRANCH: Correct. Teachers are always  
9 technically suspended from their teaching duty with pay, and  
10 there is what is referred to as the -- it's an alternative  
11 teaching center, right, so all of the teaches go there.  
12 There are multiple locations throughout some of the  
13 boroughs.

14 THE COURT: Is that what they call the rubber  
15 room?

16 MS. BRANCH: No, those are two different things.

17 THE COURT: Okay.

18 MS. BRANCH: This is for teachers who are pending  
19 charges. I believe the rubber room is something different.

20 THE COURT: Okay.

21 MS. BRANCH: But the charges are still pending,  
22 and the DOE is preparing to go forward with the 3020-A  
23 proceeding, so that is something that will be happened in  
24 the near future. But in the meanwhile, yes, Mr. Ok is not  
25 currently teaching, and every other teacher who is charged



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1 with 3020-A goes through the same. So I believe that takes  
2 us to the end.

3 THE COURT: Okay. That is good. This is what I  
4 needed.

5 MS. BRANCH: I apologize again.

6 THE COURT: Tell me if you know, and there is no  
7 reason that you would have to know this, who was the  
8 principal person for OSI that did the investigation?

9 MS. BRANCH: There were two investigators. I  
10 didn't bring the actual paper with me because I received it  
11 really recently, but one of them is mentioned in the  
12 complaint. Give me a moment. I do know that there were two  
13 investigators, but one was principally heading it.

14 THE COURT: Okay.

15 MS. BRANCH: I believe it was -- I don't have his  
16 name. I'm sorry.

17 THE COURT: Okay. Let me just revert to the  
18 plaintiff for just one second. I have one question.

19 I take it that it is your contention that the  
20 investigators were being pushed along to a result by Chin;  
21 is that right?

22 MR. GLASS: Absolutely.

23 THE COURT: Okay. I just want to make sure that  
24 was the case.

25 Do you know how much interaction there was between

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1 the investigators and Chin as opposed to investigators and  
2 other people who had run-ins with the plaintiff?

3 MS. BRANCH: They're an independent office. They  
4 communicated with him only one or twice, and that was only  
5 for the purpose of setting up an interview with Mr. Chin.  
6 They are not -- interviewees are told what each other has to  
7 say about the case and they are told not to talk to each  
8 about the case until OSI is completed.

9 THE COURT: Okay. Do you have any information on  
10 how many people they talked to as part of their  
11 investigation.

12 MS. BRANCH: From my recollection of reading the  
13 report, there were at least five individuals.

14 THE COURT: Okay. And just on the off chance you  
15 have this, again, there is no reason you should, you do not  
16 happen to have the file of emails with you, do you?

17 MS. BRANCH: No.

18 THE COURT: Okay.

19 MS. BRANCH: No. I have been receiving some of  
20 them, but I definitely do not have a file. I have a good  
21 number, but I'm sure there are more, because there are many  
22 referenced in the complaint that I do not have.

23 THE COURT: Okay. I do not really need to hear  
24 from the plaintiff because I understand your side of the  
25 case. I take it what you are effectively saying is because

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1 he made this complaint about the passing rate, Chin was out  
2 to get him because it was hurting his school and did all  
3 these things to end his career, essentially, right?

4 MR. GLASS: Yeah, I would like to mention.

5 THE COURT: Go ahead.

6 MR. GLASS: Now, Principal Chin has actually been  
7 removed himself. He's under investigation.

8 THE COURT: No, I say that. I am not sure that is  
9 relevant.

10 MR. GLASS: Well --

11 THE COURT: I mean, I am not even sure it is  
12 admissible. Why was he removed; was he stealing money?

13 MR. GLASS: That might be part of it.

14 MS. BRANCH: No.

15 MR. GLASS: They haven't disclosure the reasons  
16 yet. The DOE has not fully disclosed the reasons. But he's  
17 sitting in the same reassignment center as Mr. Ok now three  
18 days after removing Mr. Ok.

19 THE COURT: Maybe they can settle the case?

20 MR. GLASS: I'm sorry?

21 THE COURT: Maybe they can settle the case?

22 MR. GLASS: That would be nice. Well, he'd be  
23 happy to settle it, but unfortunately, you know, Mr. Chin  
24 has put motions in an attempt to get Mr. Ok fired, and  
25 that's what we're facing now, unfortunately.

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1 THE COURT: Okay. But why would I not wait on  
2 this case until after the hearing on the charges? Maybe he  
3 will be exonerated, which will change his claim; maybe he  
4 will not be exonerated, and he will be terminated, which  
5 would be a hurdle for you to overcome, wouldn't it?

6 MR. GLASS: It would make it more difficult, no  
7 question, but...

8 THE COURT: I take it ultimately these charges are  
9 heard by a neutral; are they heard by the Oath Department?

10 MS. BRANCH: No. No, they're heard by an  
11 arbitrator under the union and the DOE's collective  
12 bargaining agreement.

13 THE COURT: Okay.

14 MR. GLASS: What it is is there's a panel that's  
15 appointed jointly by the parties, and he doesn't have the  
16 selection of the arbitrator.

17 THE COURT: Right.

18 MR. GLASS: He's given the arbitrator.

19 THE COURT: Well, yeah. But I assume that the DOE  
20 also does not pick the arbitrator --

21 MS. BRANCH: No.

22 THE COURT: -- right?

23 MR. GLASS: Well, it's a panel of about 12  
24 arbitrators, and they have a rotating system of assignments  
25 and so...

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1 THE COURT: But is there any distinction -- tell  
2 me if you know this case. Do you know the case of *Collins*  
3 *against New York City Transit Authority*?

4 MS. BRANCH: I don't believe so.

5 THE COURT: It is a Second Circuit case, and  
6 basically what it says is is if there is a hearing pursuant  
7 to a CVA by a neutral, and it comes out against the  
8 plaintiff, that it is a very difficult hurdle for the  
9 plaintiff to overcome, because it is a neutral, and if the  
10 neutral finds that there was cause for the termination -- it  
11 is not like collateral estoppel or anything -- but it makes  
12 it very difficult for the plaintiff to get to the third  
13 stage of the *McDonnell Douglas* test.

14 MR. GLASS: I also believe there's a  
15 Second Circuit case called *Leon* that came out in the last  
16 few years that suggested even if a teacher was terminated,  
17 if they could prove that there was a retaliatory motive  
18 behind the charges, the case could proceed. Now, of course,  
19 there's a hurdle --

20 THE COURT: Yes, I do not doubt that. I am sure  
21 that is right.

22 MR. GLASS: Yeah, I mean, of course, there is a  
23 hurdle, obviously. If he's terminated, it's a harder burden  
24 for us, no question. But I think that should necessarily  
25 preclude us from proceeding with discovery. I mean, I do

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1 feel like this -- what seems like what's unusual about this  
2 case is the charges seem to be basically because of his  
3 speech, I mean, and there may be some questions of what --

4 THE COURT: Okay. But you acknowledge that there  
5 is some amount of speech, even assuming arguendo, that it is  
6 a matter of public importance, not within his job; but there  
7 could be too much speech, right? You can make it impossible  
8 to do your job by constantly -- and I am not saying he did  
9 this -- but by constantly harassing people with emails? If  
10 that is what the proof shows, then that might form a ground  
11 for disciplinary action, even if the original substance of  
12 the first email was First Amendment activity, right? That  
13 could happen.

14 MR. GLASS: Well, it could be a balancing. Yes, I  
15 believe that there could be a point that it's harassing.  
16 But I think the principal was basically sort of harassing --  
17 you know, he's being characterized as being harassed. I  
18 think if you read our allegation, these aren't even  
19 legitimate complaints, and Mr. Chin is trying to, you know,  
20 stop the spring from leaking about the fraud allegation.

21 THE COURT: Okay.

22 MR. GLASS: And so if they're turning this into,  
23 yes, because -- and they're turning these people against  
24 him, recruited -- you know, there are -- if you want to know  
25 the true story of what we believe happened, I mean, we feel

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1 like we recruited people that fear his own wrath of  
2 retaliation by saying Mr. Ok was doing all these terrible  
3 things and harassing them, when that wasn't the case, and we  
4 have witnesses and we'll evidence to show that, in fact,  
5 this was all Chin creating a screen to try to protect  
6 himself from legitimate allegations of fraud and misconduct.

7 THE COURT: Who are your witnesses and what are  
8 they going to say?

9 MR. GLASS: We have several witnesses, including  
10 the people they listed in one of the charges, the 3020-A  
11 charges? They're willing to say that this -- they had no  
12 problem with Mr. Ok. This is Mr. Chin's pressuring them.

13 THE COURT: Well, they will not be able to say the  
14 later, right? They can describe that they had no problem  
15 with Mr. Ok. They can describe what Mr. Chin said to them  
16 about Mr. Ok --

17 MR. GLASS: Correct.

18 THE COURT: -- but they cannot draw the conclusion  
19 that I think Mr. Chin was unreasonably pressuring Mr. Ok,  
20 they cannot say that.

21 MR. GLASS: I mean, he has 30 teachers here on a  
22 witness list saying that, you know, they felt that  
23 Mr. Chin -- they witnessed Mr. Chin masterminding campaigns  
24 to discredit him. He has a petition here of 30 people.

25 THE COURT: Okay. Yes, but that is not admissible

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1 in court.

2 MR. GLASS: Understood. But, look --

3 THE COURT: Are you going to take.

4 MR. GLASS: -- I don't know how much -- I'm sorry?

5 THE COURT: Are you going to take 30 depositions?

6 MR. GLASS: I would prefer not to.

7 THE COURT: Have you told your client they cost  
8 about a thousand dollars apiece?

9 MR. GLASS: Yeah.

10 But, you know, Mr. Chin is -- especially, also I  
11 think has more freedom of the witnesses to be truthful and  
12 open now because Mr. Chin is no longer their principal. So  
13 we feel very confident different that, you know, when the  
14 evidence comes out, they will say that, you know,  
15 Mr. Chin -- I think at trial, they would have trouble  
16 defending Mr. Chin if it gets that far, you know, as a  
17 sympathetic character in this series of events.

18 THE COURT: I'm sure he is a tough guy.

19 MR. GLASS: Let's say I'm personally aware of  
20 about 12 litigations that he's involved in with teachers at  
21 this school, but...

22 THE COURT: Well, you know, principals attract  
23 litigation the way police officers attract litigation. Like  
24 you are kind of not doing your job if you have never been  
25 sued.



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1 MR. GLASS: Well, I have been working with the DOE  
2 and the union a long time, and let me tell you that  
3 Flushing High School in particular, I have never seen so  
4 many claims come out of one school, but... So, yeah, it  
5 does raise some concern.

6 And, obviously, Mr. Chin is most -- I mean Mr. Ok  
7 is most concerned about his job. I mean, he was a highly  
8 effective teacher. Now, he's in this limbo. I have  
9 approached the defendant. I have also encouraged him  
10 through his 3020-A counsel in the disciplinary proceedings  
11 to see if we can sort of settle everything at once. I  
12 haven't really heard back from the City on that yet, but,  
13 you know, part of this is -- their weapon is 3020-A;  
14 obviously, his weapon is federal court, so it kind of shakes  
15 out.

16 THE COURT: Well, no. There is a timing issue  
17 that I have to think about. You know, their weapon is  
18 3020-A, his weapon is federal court, but it may not be -- I  
19 don't want to say "right," because it is right -- but it may  
20 not be prudent to proceed here without knowing where that  
21 comes out.

22 I take it while he is on the suspended status is  
23 he still being paid?

24 MS. BRANCH: Yes.

25 MR. GLASS: Yeah. And also, just one factual

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1 thing, I mean, it was not required that he be removed from  
2 the school pending charges. This is something that Chin put  
3 in place, and it's not --

4 MS. BRANCH: No.

5 MR. GLASS: -- it's not actually required in every  
6 case that a teacher be removed from his assignment or from  
7 his school pending 3020-A charges. I don't know of --

8 MS. BRANCH: Your Honor, there is absolutely --  
9 I'm sorry, but I have to interject here. That is absolutely  
10 not correct. Mr. Chin would have had nothing to do with  
11 Mr. Ok being removed from the school. That is a decision  
12 that is made by the DOE's legal department, and that is done  
13 with all teachers who have 3020-A charges.

14 THE COURT: You are saying there is discretion?

15 MR. GLASS: That's not --

16 MS. BRANCH: Not for the principal.

17 MR. GLASS: That's not totally -- I even went to a  
18 hearing last week with another principal who said that she  
19 had a choice of whether to remove the teacher or not, so  
20 that's not true. But regardless, you know --

21 THE COURT: There is a dispute.

22 MR. GLASS: There's not -- yeah.

23 He's on pay pending. You know, he can't be off  
24 pay until such time an arbitrator issues a penalty, so --

25 THE COURT: Right.

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1 MR. GLASS: -- that's the status right now.

2 THE COURT: Okay. I think I understand.

3 Let me ask the defendant this question: Your  
4 letter is all about alleged deficiencies on the face of the  
5 complaint.

6 MS. BRANCH: Yes. Some of them, yes.

7 THE COURT: Are you going to move?

8 MS. BRANCH: Well, Your Honor, when I spoke to  
9 plaintiff's counsel last, we just talked about it upstairs  
10 very briefly. It appears that there are some things that  
11 the City would want to move on that. Perhaps, a partial  
12 motion.

13 THE COURT: Why don't you wait for summary  
14 judgment?

15 MS. BRANCH: Well, Your Honor, as you mentioned, a  
16 3020-A still hasn't happened yet. So I'm talking  
17 specifically about the New York Civil Service Law claim.

18 THE COURT: Right.

19 MS. BRANCH: That claim really should not go  
20 forward.

21 THE COURT: That claim is not right.

22 MS. BRANCH: No. No, it is not.

23 THE COURT: Right.

24 MS. BRANCH: So we would want to move for at least  
25 a partial motion on those grounds. And then also as far as

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1 just on the face, there are really hardly any allegations by  
2 Amaya. So with respect to the 1983 First Amendment claim,  
3 there are no allegations about speech made to Amaya or Amaya  
4 punishing him in some way for that.

5 THE COURT: That speech made to?

6 MS. BRANCH: Made by Mr. Ok to Amaya and Mr. Amaya  
7 punishing him in some way for that. So we would want to  
8 move on partial grounds for that as well.

9 THE COURT: Okay. Do you want to just deem your  
10 letter to be the motion?

11 MS. BRANCH: Well, Your Honor, I failed to include  
12 that a particular fact in the letter, so no.

13 THE COURT: Fine.

14 MS. BRANCH: If you permit me to submit an extra  
15 paragraph or two, then yes.

16 THE COURT: Okay. Can you do that tomorrow?

17 MS. BRANCH: Tomorrow? Or Monday?

18 THE COURT: Tomorrow? If you tell me you do not  
19 work weekends, then I will tell you Monday, but my  
20 experience is most court counsel are in the office on  
21 weekends.

22 MS. BRANCH: I can do it tomorrow, sure.

23 THE COURT: Whatever you want. You can do it  
24 tomorrow --

25 MS. BRANCH: Well, Your Honor, I'm in trial so

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1 that's why I'm --

2 THE COURT: Oh.

3 MS. BRANCH: I hesitate because I have the weekend  
4 planned with other things.

5 THE COURT: Okay. Let's say you supplement your  
6 letter on Monday, and that will be the motion to dismiss.

7 MS. BRANCH: I can do that.

8 THE COURT: Okay.

9 MS. BRANCH: Thank you.

10 THE COURT: And the plaintiff will respond in 14  
11 days after that.

12 Now, I do have a couple of other issues I want to  
13 talk about with regard to the grounds raised in the  
14 defendants' letter. I don't really understand the notice of  
15 claim's situation. You have to file a notice of claim  
16 before you can proceed under state law, right?

17 MS. BRANCH: He did.

18 THE COURT: Oh, there is a notice of claim?

19 MS. BRANCH: There is a notice of claim.

20 THE COURT: Okay. I thought you were complaining  
21 that he had not done one.

22 MS. BRANCH: No, Your Honor, he did file a notice  
23 of claim. What the defendants are saying is that the notice  
24 of claim was filed so late in the game that there are  
25 numerous events that would not meet the statute of

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1 limitations because they occurred months, so, you know, more  
2 than a year before he actually filed the notice of claim.

3 THE COURT: Does the notice of claim have to be  
4 filed 90 days after the complained-of incident.

5 MS. BRANCH: Yes, after the accrual of your claim.  
6 That's what the --

7 THE COURT: The accrual of your claim?

8 MS. BRANCH: That's what the statute says, yes.

9 THE COURT: And we are only dealing with state law  
10 claims?

11 MS. BRANCH: Yes.

12 THE COURT: Okay. So is there not an agreement  
13 that, in fact, anything that happened prior to 90 days  
14 before the notice of claim, while he might be able to get in  
15 evidence for purposes of showing other things like intent,  
16 you cannot recover damages based on things that proceed the  
17 notice of claim by more than 90 days, right?

18 MR. GLASS: With regard to specific acts, I guess  
19 you're right, Your Honor. But I guess this is an ongoing  
20 situation where he's faced with 3020-A presently, so there  
21 might be some things what's encompassed within that time  
22 period when we filed it.

23 THE COURT: Sure. I am not saying there isn't.

24 But, I mean, let's go through, what are your state  
25 law claims? Aside from the 1983 claim, what have you got?

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1 MR. GLASS: I threw in a appendant defamation.

2 THE COURT: Okay. When was the defamation? Was  
3 that within 90 days of filing the notice of claim? It looks  
4 like not.

5 You see, there are some issues with the way this  
6 complaint was pled.

7 MS. BRANCH: Yes.

8 MR. GLASS: I mean, we can address that in the  
9 letter to see -- I understand Your Honor's point.

10 THE COURT: Well, I do not want to put Defendants  
11 to the trouble of moving to dismiss things that we all  
12 recognize cannot go forward. The problem is I think your  
13 complaint is not written to facilitate our determination of  
14 that, and I also will tell you that I think you ought to  
15 give up the intentional infliction of emotion distress  
16 claim. You know why, right? Has anyone ever won one?

17 MR. GLASS: No, the heart of the complaint is the  
18 federal claim. There's no question about it.

19 THE COURT: I agree. And I am not telling you to  
20 get rid of the state claims, but I would like you to write  
21 to the defendant, not to me, by Tuesday narrowing your  
22 claims to extent you think that is reasonable to do. And  
23 like I said, I think that should include the voluntary  
24 dismissal of the IED claim.

25 MS. BRANCH: Well, Your Honor, if I may ask? If

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1 the defendant has until Tuesday, may I also have until  
2 Tuesday night before I submit the letter?

3 THE COURT: Yes, I guess so. Wednesday.

4 MS. BRANCH: Thank you.

5 THE COURT: Okay.

6 And if there are things in this complaint that are  
7 being offered just to prove intent and not to seek to  
8 recover damages because, in fact, they are beyond the notice  
9 of claim window, tell her that, too, please. Okay? One  
10 purpose of this conference is to make less work for the  
11 parties, not more. Sometimes that means doing a little more  
12 on the front end, but it saves the work on the back end.

13 MS. BRANCH: Understood.

14 THE COURT: Okay. Let me ask the defendants this:  
15 Is there any conflict in you representing Mr. Chin in light  
16 of the pending charges?

17 MS. BRANCH: Pending charges against Mr. Ok?

18 THE COURT: Mr. Chin.

19 MS. BRANCH: There are no pending charges against  
20 Mr. Chin.

21 THE COURT: Oh. Oh, why am I misinformed? I  
22 thought there were pending charges.

23 MR. GLASS: He has been removed.

24 MS. BRANCH: Right. But just because the  
25 principal is not in the school anymore, does not mean that



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1 there are charges.

2 THE COURT: That is correct. There are no pending  
3 charges?

4 MS. BRANCH: No.

5 THE COURT: He is just doing something else with  
6 the DOE?

7 MS. BRANCH: Right.

8 THE COURT: All right. That is fine. No problem.

9 Okay. Next, let's talk about discovery. Now, you  
10 have taken my suggestion of a 90-day discovery period to  
11 heart?

12 MS. BRANCH: Yes, Your Honor.

13 THE COURT: But I am not convinced that it is  
14 possible.

15 MS. BRANCH: I would like to -- once I began  
16 really looking into the emails that I've been receiving over  
17 the past few days, it became clear that I just don't have  
18 enough in. If we need to do e-discovery then I would like  
19 to ask for more time. And I apologize for not thinking  
20 about that more in-depth before submitting the schedule, but  
21 I can't be confident that we could get it done.

22 THE COURT: Okay. Next time you appear before me,  
23 you will understand my expectations for this conference --

24 MS. BRANCH: Yes, Your Honor.

25 THE COURT: -- and you will do what you need to

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1 do.

2 MS. BRANCH: Yes, Your Honor.

3 THE COURT: Okay. When is your trial over?

4 MS. BRANCH: 4/17 -- or 18.

5 THE COURT: Okay. Nobody has made Rule 26(a)(1)  
6 disclosures yet, right?

7 MS. BRANCH: No.

8 THE COURT: Okay. Let's do this: Let's work  
9 backwards. Let's say by April 27th -- no, that is too soon.  
10 May 4th, you exchange Rule 26(a)(1) disclosures. By  
11 May 11th, you serve written discovery requests,  
12 interrogatory and document requests. Those will be  
13 responded to on June 11th, and really realistically, give me  
14 a range of depositions that each side is thinking of taking.  
15 I assume from the defendants' perspective it is probable  
16 only the plaintiff's deposition that needs to be taken,  
17 maybe there are some former employees.

18 MS. BRANCH: At this point I think it would only  
19 be the plaintiff because almost everyone else still works  
20 for the DOE.

21 THE COURT: You know, plaintiff's 26(a)(1)'s are  
22 going to disclose to you a number of witnesses --

23 MS. BRANCH: Right.

24 THE COURT: -- who the plaintiff says are going to  
25 give evidence that shows that Plaintiff did not do anything

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1 wrong and Mr. Chin was out to get him.

2 MS. BRANCH: Right.

3 THE COURT: Again, neither side is going to take  
4 30 depositions in this case. It is simply not economically  
5 possible. But you each may take three to four, I think.

6 Does anybody think that is wrong?

7 MR. GLASS: Well, we'll certainly depose Chin and  
8 Amaya, but I mean, beyond that, I'm now sure.

9 MS. BRANCH: I have no reason to believe it will  
10 be beyond three or four for Defendants.

11 THE COURT: Okay. So if we have the documents by  
12 June 11th and we give you 60 days, to August 13th to  
13 complete depositions, that should be plenty of time, right?

14 MS. BRANCH: I would agree, yes, Your Honor.

15 MR. GLASS: That's fine.

16 THE COURT: Okay. Tell me if I am wrong. Stop me  
17 if I say anything that does not meet your requirements.

18 MS. BRANCH: With one caveat, Your Honor. With  
19 respect to the responses to the document request by 6/11 --

20 THE COURT: Yes.

21 MS. BRANCH: -- are we saying that would include  
22 the electronic discovery as well?

23 THE COURT: It would. The electronic discovery  
24 should be easier for you, not harder.

25 MS. BRANCH: No, it shouldn't be. Depending on

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1 how many -- I don't know, there could be thousands of  
2 emails. It's just filtering through them and producing  
3 them, that does take time.

4 THE COURT: Do they? Oh, I guess reading them  
5 after you have put in the button and they spit them all out,  
6 you have to read them.

7 MS. BRANCH: That's the time-consuming part, yes.

8 THE COURT: I'm going to leave it on for June 11th  
9 now.

10 MS. BRANCH: Okay.

11 THE COURT: If at the end of that period you write  
12 me a letter saying, I've got 10,000 emails that I have not  
13 been able to review, then we will adjust the schedule.

14 MS. BRANCH: Yes, Your Honor.

15 THE COURT: But let's start out optimistically and  
16 see how much we can get down.

17 MS. BRANCH: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. GLASS: I can say with my experience with the  
20 City, that that's generally the cause of delay.

21 THE COURT: The City is different when they appear  
22 in front of me. They understand, you know, I give  
23 extensions if needed, but not because somebody was working  
24 on some other cases and could not get to this one. So, you  
25 know, I expect in all my cases, this one is no different,

1 that both parties are going to make this case a priority and  
2 things are going to happen and they are going to push their  
3 clients to make them happen, because I do not give  
4 extensions gratuitously. Okay? I mean, obviously, I am  
5 going to extend you if something terrible happens, like some  
6 judge says, You have to be in depositions for three weeks  
7 solid, you know, I have to accommodate that. But if there  
8 is something that could have been thought of right now and  
9 has not been, then I am not going to extend for that reason,  
10 and I am going to require notice that there is a need for  
11 extension when the need arises, not two months later. So  
12 you could write me before June 11th if you get a handle on  
13 the ECI and it is overwhelming.

14 MS. BRANCH: Okay.

15 THE COURT: All right?

16 Okay. So if we optimistically finish discovery by  
17 August 13th, there is no doubt in my mind that the  
18 defendants are going to try to make a summary judgment  
19 motion, which I would require a premotion conference letter  
20 on August 20th explaining the basis for the motion. I will  
21 then set a short schedule for the plaintiff to respond to  
22 that letter. We will then have a premotion conference. The  
23 defendant should expect a prompt and short motion schedule  
24 following that conference whenever it is.

25 Then I will take the motion. It will, again, be

1 on a short schedule. Figure 14 days for opposition, seven  
2 days for reply. I will get to it quickly. But I will not  
3 commit to how quickly. And then either I grant summary  
4 judgment to the defendants or we go to trial shortly  
5 thereafter. So in all likelihood, it seems to me that we  
6 are going to be trying this case, if it survives summary  
7 judgment, in October, probably November, but probably then.  
8 I have some other things going on then, but if I cannot get  
9 to you, I will get you to a senior judge who will try the  
10 case. I will not delay the trial. Okay?

11 Now, the only other thing I should mention, I  
12 mean, just talking to both of you, I do not anticipate any  
13 discovery difficulties. Do you see any, you know, thing  
14 that the plaintiff might want that the defendant does not  
15 want to give or vice versa?

16 MR. GLASS: I'm just a little concerned with  
17 electronic discovery, just to make sure it's complete.

18 THE COURT: Counsel is going to demonstrate the  
19 utmost diligence.

20 MR. GLASS: Okay.

21 THE COURT: Okay? And she understands that  
22 sometimes that requires getting a little tough with your  
23 clients for whom it is not as big a priority as it is for  
24 her.

25 MS. BRANCH: Yes.

1 THE COURT: If there is a discovery dispute, you  
2 should understand I do not do discovery disputes. That does  
3 not mean I send them to a magistrate judge. It means I do  
4 not tolerate discovery disputes. So if you have a dispute  
5 involving some cutting edge, *bona fide* privilege issues or  
6 something like that, by all means, bring that in front of me  
7 promptly using the peculiar procedures I have in my  
8 individual practice rules. But if it is the usual kind of  
9 discovery motion, this request is too broad, this response  
10 is too narrow, somebody at a deposition instead of saying  
11 object, which is all you are allowed to say, was explaining  
12 the objection in a way that tipped off their client what to  
13 be careful about, if it is that kind of thing, you should  
14 know that 95 percent of the time I end up making the loser  
15 pay attorneys' fees on the discovery motion, okay? So do  
16 not come to me with a discovery motion unless you really  
17 think it is something you need or a position you need to  
18 protect and it is something on which you reasonably expect  
19 to prevail. Because I do not like awarding attorneys' fees,  
20 and I do not get it. Because I used to practice, I do not  
21 get more than three or four discovery motions a year. You  
22 know, my window of what is good faith discovery under  
23 Rule 37 just seems to be narrower than what the lawyers' is  
24 most of the time. So please keep that in mind so we do not  
25 have an issue.

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1           Again, looking at both of you and listening to  
2 both of you, you both seem quite reasonable. I do not think  
3 we are going to have any problems here at all.

4           MR. GLASS: Well, I was in her shoes many years  
5 ago, and I generally have a pretty good relationship with  
6 that office, so I don't anticipate any problems.

7           THE COURT: I suspected that. You did not overtly  
8 say before that you used to be in her shoes, but you  
9 obviously have some experience from that side of the table.

10          MR. GLASS: Yes.

11          THE COURT: Okay. Anything else we need to cover?  
12 You know, you do not need to worry about these dates. I  
13 will put them in the minute order so that you have them and  
14 we will see what we can do with them.

15          MS. BRANCH: I believe that Your Honor suggested  
16 everything -- I don't have anything further.

17          THE COURT: Okay.

18          MR. GLASS: Is there anything regarding -- I don't  
19 necessarily anticipate experts.

20          THE COURT: It is a good point. I am not going to  
21 schedule expert discovery now because nobody knows what they  
22 are going to have. I think there probably will not be any  
23 experts. But just in case if there are, you have to notify  
24 me promptly sometime during the fact discovery period. The  
25 schedule I set is for fact discovery. It is not assuming



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1 expert discovery. But I need to know before the end of fact  
2 discovery that there is something on which you think you  
3 need an expert.

4 Do you see you needing any experts now?

5 MR. GLASS: No, I don't anticipate any in this  
6 kind of case.

7 THE COURT: Just in case, though, let me know well  
8 before the fact discovery cutoff so that we can set up an  
9 extension that will accommodate any experts.

10 Anything else I can do for you?

11 MS. BRANCH: No, Your Honor.

12 MR. GLASS: No. Thank you, Your Honor.

13 THE COURT: Nice to see you all. Thanks for  
14 coming in.

15 (Matter concluded.)

16 --oo0oo--

17  
18  
19  
20 *I (we) certify that the foregoing is a correct transcript*  
21 *from the record of proceedings in the above-entitled matter.*

22 /s/ David R. Roy  
DAVID R. ROY

19th Day of April, 2018  
Date